

# SENATE BILL REPORT

## ESHB 1401

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As Reported by Senate Committee On:  
Governmental Operations, April 1, 2013

**Title:** An act relating to the timing of penalties under the growth management act.

**Brief Description:** Addressing the timing of penalties under the growth management act.

**Sponsors:** House Committee on Local Government (originally sponsored by Representatives Fitzgibbon, Dahlquist, Takko, Fey, Wilcox, Kochmar, Magendanz, O'Ban, Morrell and Jinkins).

**Brief History:** Passed House: 3/08/13, 89-9.

**Committee Activity:** Governmental Operations: 3/25/13, 4/01/13 [DPA].

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### SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

**Majority Report:** Do pass as amended.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Braun, Conway, Fraser and Rivers.

**Staff:** Karen Epps (786-7424)

**Background:** The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under GMA. It also establishes a reduced number of directives for all other counties and cities. GMA directs jurisdictions that fully plan under the act (planning jurisdictions) to adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans, which are the frameworks of county and city planning actions, are implemented through locally adopted development regulations.

GMA establishes the Growth Management Hearings Board (GMHB). GMHB is comprised of three panels for the purposes of hearing and deciding cases within the following regions: central Puget Sound; eastern Washington; and western Washington. GMHB consists of seven members who are appointed for six-year terms, with at least two each residing in the geographic regions of the panels. Each regional panel selected to hear and decide cases must consist of three board members, at least a majority of whom must reside within the region.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

GMHBs have limited jurisdiction and may only hear and determine petitions alleging the following:

- that a state agency or planning jurisdiction is noncompliant with GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments;
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted;
- that the approval of a watershed work plan is not in compliance with the requirements of the voluntary stewardship program;
- that development regulations to protect critical areas as part of the voluntary stewardship program are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or
- that the Department of Commerce's (COM's) certification of development regulations as part of the voluntary stewardship program is erroneous.

GMHB may find compliance or remand for plans or regulations to be brought into compliance. If the agency or local government is found to be not in compliance, GMHB must generally remand the matter to the agency or local government for 180 days, within which it must comply with applicable requirements. Following a hearing to determine whether the agency or local government satisfied the requirements of the remand, GMHB may find that the agency, county, or city is in compliance or that it remains not in compliance. GMHB may also invalidate plans or regulations that substantially interfere with the goals and requirements of GMA. Final decisions and orders of GMHB may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with GMHB. Upon receipt of GMHB's finding that a state agency or planning jurisdiction remains noncompliant after a period of remand, the Governor may impose financial penalties in the form of reducing or withholding appropriations or revenues to which the agency or local government is otherwise entitled.

Compliance with requirements of GMA is a criteria state agencies consider when making determinations for financial awards to local governments. For example, when state agencies are considering awarding grants or loans to planning jurisdictions for financing public facilities, they must consider whether the local government has adopted a comprehensive plan and development regulations mandated by GMA. For purposes of these public facility grants and loans, and associated preferences, a local government is deemed to have satisfied its adoption requirements if it meets one of several conditions, including if the local government adopts or adopted a comprehensive plan and development regulations before submitting a request for a grant or loan.

With limited exceptions, in order for planning jurisdictions to qualify for loans or pledges from the Public Works Assistance Account (Account), the planning jurisdiction must have adopted a comprehensive plan and required development regulations. The Account, commonly known as the Public Works Trust Fund, was created by the Legislature in 1985 to provide a source of loan funds to assist local governments and special purpose districts with infrastructure projects. In certain circumstances, local governments could request and receive a loan or loan guarantee from the Account before adopting a required comprehensive plan or development regulations.

Similarly, for planning jurisdictions to qualify for a Department of Ecology (DOE) grant or loan for a water pollution control facility, the planning jurisdiction must generally adopt a comprehensive plan and development regulations. In limited time-specific circumstances, local governments could request and receive a water pollution control facility grant or loan before adopting a required comprehensive plan or development regulations.

**Summary of Bill (Recommended Amendments):** Unless GMHB makes a determination of invalidity, state agencies, commissions, and governing boards may not penalize jurisdictions during the period of remand following a finding of noncompliance by GMHB and the pendency of an appeal before GMHB or subsequent judicial appeals. In order to not be penalized, jurisdictions must:

- have delayed the effective date of the action subject to the petition until after GMHB issues a final determination; or
- within 30 days of receiving notice of a petition for review by GMHB, delay or suspend the effective date of the action until after GMHB issues a final determination.

If a comprehensive plan, development regulation, or an amendment is appealed to GMHB and has not yet taken effect, the local jurisdiction may not be deemed ineligible, or otherwise penalized, in the award of a state agency grant or loan during the pendency of the appeal before GMHB or during any subsequent judicial appeals. During these appeals, state agencies must accept an otherwise eligible application for a state grant or loan. In order to not be penalized, jurisdictions must:

- have delayed the effective date of the action subject to the petition until after GMHB issues a final determination; or
- within 30 days of receiving notice of a petition for review by GMHB, delay or suspend the effective date of the action until after GMHB issues a final determination.

Whenever a state agency is considering awarding grants or loans for public facilities to a special district requesting funding for a proposed facility located in a planning jurisdiction, the agency must apply these provisions.

For purposes of public facility loans or grants awarded by state agencies, and associated preferences for local governments that adopt required comprehensive plans and development regulations, a local government is deemed to have satisfied its adoption requirements if the local government adopts or adopted a comprehensive plan and development regulations before the state agency makes a decision regarding award recipients of loans or grants.

A planning jurisdiction that adopts a comprehensive plan and development regulations may request financial assistance for public works projects. Planning jurisdictions are not required to adopt a comprehensive plan or development regulations before requesting financial assistance from the Account. Additionally, a planning jurisdiction that has not adopted a comprehensive plan and development regulations within specified time periods is not prohibited from applying for or receiving financial assistance from the Account if the comprehensive plan and development regulations are adopted before executing a contractual agreement for financial assistance.

A planning jurisdiction that adopts a comprehensive plan and development regulations may request a grant or loan for water pollution control facilities. A planning jurisdiction that has not adopted a comprehensive plan and development regulations within specified time periods

is not prohibited from receiving a grant or loan for water pollution control facilities if the comprehensive plan and development regulations are adopted before DOE disburses funds for the grant or loan.

**EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS COMMITTEE (Recommended Amendments):** Specifies that a planning jurisdiction may apply for and receive financial assistance for qualifying public works projects, if the required comprehensive plans and development regulations are adopted before executing the contractual agreement for financial assistance.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** PRO: This is a good bill. There may be amendments so that the bill works for all the counties.

OTHER: Snohomish County is requesting an amendment because when language from HB 1484 was integrated into this bill, it created a contradiction between sections 1 and 2, and section 3 of the bill. The amendment adds two words, apply for, so that counties may apply for financial assistance if a county is not in compliance with GMA, but will be in compliance with GMA before executing a contract for the financial assistance.

**Persons Testifying:** PRO: Laura Merrill, WA Assn. of Counties; Brynn Brady, Pierce County.

OTHER: Briahna Taylor, Snohomish County.